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City of Boston Finance Commission

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REPORT ON THE LAFAYETTE PLACE DEVELOPMENT PROJECT

April 26, 1979

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INTRODUCTION

On April 16, 1975, the City of Boston and Jordan Marsh Company announced plans for the development of a \$220 million project in downtown Boston.¹ The development, known as Lafayette Place, was to include \$30 million in public improvements and \$185 million in private investment in the downtown retail district.² Included in the cost would be the reconstruction of Jordan Marsh's main store at a cost of \$35 million. Adjacent to Jordan Marsh, Lafayette Place would house a 450,000 square foot shopping mall (to include a new 160,000 square foot department store), and a 750 room convention hotel. Additionally, three or four medium-rise office buildings, containing 1.2 million square feet of office space would be constructed upon completion of the retail elements. Complementing the private investment would be a 1500-car parking garage constructed by the city's Real Property Department at a cost of \$18 million and \$12 million in additional public improvements to the downtown shopping area. Hailed by Mayor White as a project with "global" significance, Lafayette Place was envisioned to create 6000 construction jobs and over 11,000 permanent employment positions. The mayor also stated that once completed, the new complex would contribute \$7 million annually to the city in tax revenues.

Four years have passed since Lafayette Place was announced to the public. During this period only one phase of the project, the Jordan Marsh reconstruction, has been completed. The remaining elements of Lafayette Place have changed considerably and an entirely new plan has been approved by the mayor and City Council. The following report outlines those changes which have occurred in the overall plan and identifies many of the difficulties that the City of Boston continues to face due to its poorly-

¹Jordan Marsh Company is a division of Allied Stores Corporation and is referred to under both names throughout this report.

²Although Mayor White's press release of April 16, 1975 stated that private investment in Lafayette Place would be \$190 million and public improvements would cost \$25 million, a BRA fact sheet on the project, which was prepared at that time, stated that there would be \$185 million worth of private investment, \$30 million in public improvements and \$5 million in MBTA improvements.



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managed development process which fails to coordinate efforts between participating city departments and private sector investors.

BACKGROUND

Between the late 1950's and early 1970's, Boston's downtown retail district suffered much the same fate that affected many other older, northeastern cities in this country. Continued suburbanization and out-migration from the central city, coupled with increasing property taxes and the encroaching blight of lower Washington Street lead to an erosion of the downtown tax base and a 22% decline in retail sales between 1958 and 1970.¹ Many department stores, including Crawford Hollidge, Chandler's, Jay's, Stearn's, Gillchrist, R.H. White's, Raymond's and City Mart closed, leaving only three major department stores in downtown Boston: Woolworth, Filene's and Jordan Marsh.

Much of the decline in downtown retail sales can be attributed to the rapid expansion of suburban shopping centers and malls throughout the metropolitan area. While downtown retail sales have declined and stores have closed, the suburbs have enjoyed a new prosperity from giant, tax producing shopping malls. The competition from suburban malls, was in large part created by the parent companies of the downtown stores which decided to expand into the suburbs. These large retailers are therefore partially responsible for contributing to the decline of the downtown retail district.

The City of Boston has recognized the problem faced by downtown retailers and has made substantial efforts to improve the retailing climate in the city. During the past five years, the city has expended \$12 million in public funds on the Quincy

¹ Robert Beal, in his appraisal in conjunction with the Lafayette Place land assembly, stated, "Retail sales in constant 1970 prices declined from \$260,000,000 in 1958 to \$203,000,000 in 1970." Coupled with that decline, the city's Lafayette Place Urban Development Action Grant (UDAG) application stated that the city lost 5,000 jobs in retail and wholesale trades from 1960 to 1970.

Market restoration, encouraged new office development through favorable tax treatment under G.L. c. 121A and has created the "Downtown Crossing" with cosmetic renovations along Washington Street. In addition to these public sector investments there has been private sector investments in the downtown retail district, as evidenced by the construction of the Woolworth department store, the renovation of Filenes and the reconstruction of Jordan Marsh.

JORDAN MARSH RECONSTRUCTION

In the early 1970's Jordan Marsh and its parent company, Allied Stores Corporation of New York, decided to reduce the size of the chain's flagship store in downtown Boston. Jordan's determined that its 1.7 million square foot facility, which was housed in a conglomeration of several aged, inefficient buildings, if reduced in size by approximately 50%, could still maintain a healthy annual sales volume.¹ In addition to creating a more modern and efficient sales facility, reducing the size of Jordan's would mean that the company's property taxes could be substantially cut and at the same time the store would be further away from the encroaching blight of the "combat zone."

Jordan's decided to reduce its space by vacating its facilities below Avon Street (the Annex and Bristol Building) and replacing the Old Main and Shuman Building with an addition to the store's remaining building on Summer and Chauncy Streets. Although this plan would allow Jordan's to fulfill its goal of reducing the size of its physical plant, it would leave the store with surplus taxable property bordering the "combat zone" and would add to the area's ever-increasing decay.

¹Jordan Marsh has, in fact, been able to maintain its pre-reconstruction sales volume in its smaller store. William Tilburg, Chairman of the Board of Directors of Jordan Marsh Co., stated at a City Council hearing on October 6, 1978 that just prior to reconstruction, Jordan Marsh did an annual sales volume of "a shade below \$80 million." It had previously been stated at that hearing that in 1978, after the renovation, annual sales were estimated to be over \$80 million.

In an effort to deal with the would be vacant land below Avon Street, Allied's Vice President for Legal and Governmental Affairs, Benjamin Frank, developed the idea of incorporating the Jordan Marsh reconstruction into a comprehensive, multi-use development for the contiguous four block area. Frank sought out Sefrius, a Paris-based development firm led by Jacques Tezé, to create a development plan that would enhance the new, smaller Jordan Marsh store and would utilize Allied's vacant land below Avon Street. Tezé, working in conjunction with the BRA and Allied, formulated the original Lafayette Place plan which included the following privately financed elements:

- an 825,000 square foot Jordan Marsh store bounded by Avon, Washington, Summer and Chauncy Streets, acting as northern anchor for the development.

- a 300,000 square foot shopping mall situated below Avon Street on the vacant Allied land (the Annex and Bristol Block) and a BRA-owned parcel which was the former site of Raymond's Department Store.

- a new 160,000 square foot department store located on the site of the Hayward Place Garage which would be demolished. This store would have acted as southern anchor for the development.

- a 750 room convention hotel located at the southeast corner of the retail element.

- a 1.2 million square foot office complex housed in several medium-rise towers constructed above the other corners of the retail element.

In addition to the above, Tezé's plan included the city's acquisition of approximately 108,500 square feet of land directly behind the development (58,000 square feet was owned by Boston Edison) and construction of a 1500-car parking garage by the Real Property Board at a cost of \$18 million. The city would also spend approximately \$12 million for "public improvements" in the Central Business District which would include the construction of a "New Essex Street", plazas, sidewalks, and lighting.

Tezé's plan appeared to deliver something for everyone. Allied would build a truck service ramp and consolidate its store with a new two-story addition, an action which could be judged in the best interest of the company, with or without the development. For that contribution, Allied would:

- 1) receive \$14 million for its surplus property (property which would have a negligible value if left undeveloped),¹
- 2) benefit from Jordan Marsh's linkage into a new mall, hotel and office complex which would attract shoppers into the store, and
- 3) benefit from the new parking garage to be linked to Jordan Marsh.

The city would also benefit from the development. Its \$30 million public investment, which would go primarily toward constructing an income-producing parking garage, was going to attract considerable private investment which would be the catalyst for rejuvenating the entire downtown retail district.¹ The city foresaw the creation of 17,000 jobs (6,000 during construction), increased tax revenues from the project property, increases in the entire downtown tax base, and a method for attracting shoppers away from the suburban malls and back to the city.

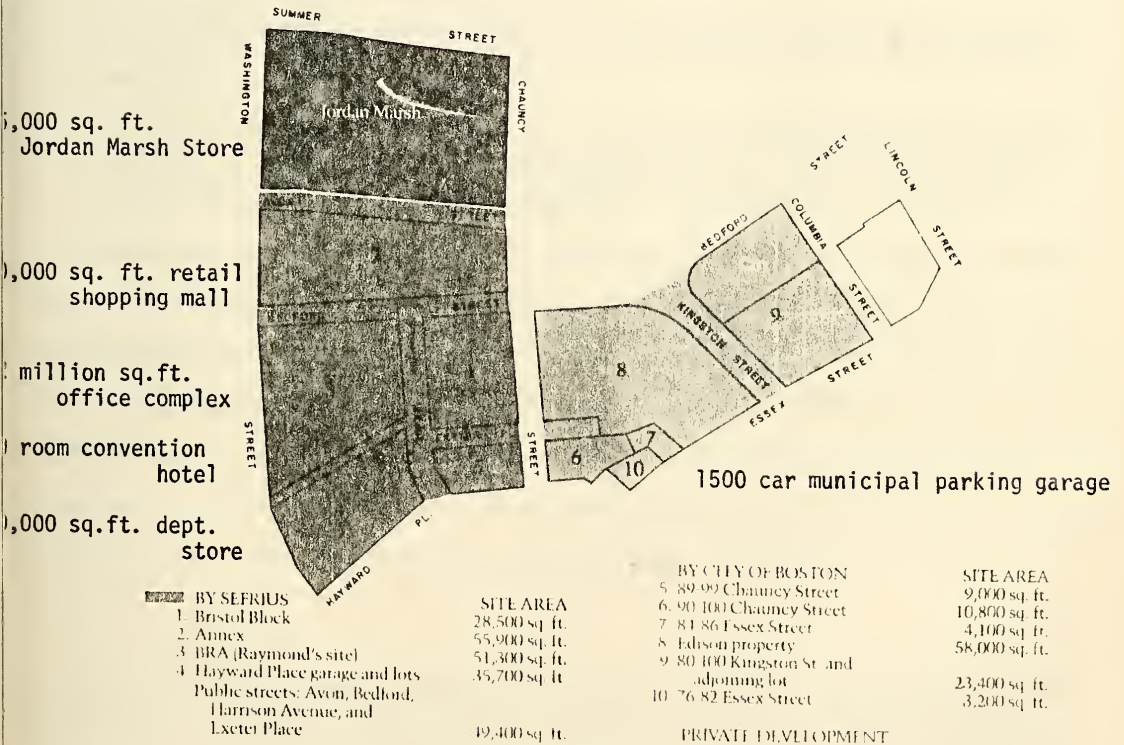
Although Tezé's plan called for the displacement of approximately 125 business which would cost the city approximately \$2.5 million in relocation expenses, and the demolition of several architecturally significant buildings such as the Bedford Building and the newly renovated Textile Building, the plan was readily accepted by the BRA, city officials and downtown retailers.

¹According to Lafayette Place Project Director, Joseph Berlandi, in testimony before the Finance Commission, Sefrius was originally going to purchase the Allied property for \$14 million. Later, an agreement was worked out where Sefrius would pay \$9.5 million in cash and Allied would have a \$4 million equity position in the project.

²The Lafayette Place garage would have replaced two mechanical garages (Hayward Place and Kingston-Bedford) and one ramp-style garage (Lincoln-Essex). The Real Property Department contends that the garages should be replaced because the two mechanical garages are underutilized due to their inefficiency, and the Lincoln-Essex garage is structurally un-sound.

ORIGINAL LAFAYETTE PLACE LAND ACQUISITION PLAN

ACQUISITION



Source: Boston Redevelopment Authority, April 1975.

Upon City Council approval of the plan in June of 1975, Allied quickly moved forward on the reconstruction of the Jordan Marsh Store. As an incentive, Allied received certain tax advantages for renovating its old building and constructing the new addition.¹ Allied applied for and received a G.L. c. 121A in-lieu-of-tax agreement with the City of Boston for their soon-to-be reconstructed Main Building. The Corporation's 121A agreement for in-lieu-of-taxes on the Main Building parcel consists of the following terms:²

- 1) For the period prior to the commencement of construction the Corporation shall pay \$1,705,000 per calendar year;
- 2) During the period of construction of the project, which shall not exceed 30 months except for unavoidable delay, the Corporation shall pay \$1,125,000 per calendar year;
- 3) After completion of construction of the project, the Corporation shall pay \$1,600,000 per calendar year plus, if sales exceed \$60,000,000, one half of one percent (.005) of the first \$40,000,000 of such excess and one quarter of one percent (.0025) on any balance of such excess.

Under the terms of this agreement, Allied is guaranteed that its taxes for the next 40 years will be calculated in the manner described above. As a result, the Corporation will have substantially reduced its taxes from what they would have been had it continued to operate its old building. In spite of inflation and the substantial increase in the tax rate between 1970 and 1975, the \$1,705,000 that Allied was required to pay before commencement of construction was a reduction from the \$1,783,000 that the corporation was paying on the same building in 1970.

¹According to Assessing Department records, Jordan Marsh has historically been treated quite favorably by the city's tax assessors. Between 1958 and 1970, the assessment on its Main Building bounded by Summer, Chauncy, Washington, and Avon decreased by \$3,053,000 (21%) from \$14.42 million to \$11.37 million. Although the tax rate had risen from \$93 in 1958 to \$156.80 in 1970 (69%), the taxes on Jordan Marsh's Main Building only increased from \$1.34 million to \$1.78 million (32%) due to the reduced assessment. Similar arrangements were made for the Annex and Bristol Buildings.

²The 121A in-lieu-of-tax agreement is in the name of Al-Jordan Realty Corporation, which is a subsidiary of Allied Stores Corporation.

According to William Tilberg, Chairman of Jordan Marsh, during construction, while the store's selling area was reduced, sales dropped from \$78 million prior to construction to \$65 million. Although this was only a 17% drop in sales, taxes under the 121A agreement were reduced by 34% during construction. Finally, under the operating phase of the 121A agreement covered under paragraph 3, which is used from completion of construction until the termination of the agreement in the year 2015, Allied's taxes will be substantially lower and more stable than if the store were taxed under typical Assessing Department procedures. In 1978 Jordan Marsh paid approximately \$1.7 million in taxes under its 121A agreements. If it had been taxed at the 1978 tax rate of \$252.90 under its pre-121A assessment of \$11,375,600, the tax would have been \$2.877 million.¹

Joseph Berlandi, BRA Director of Downtown Development and Lafayette Place Project Director, stated at a City Council hearing on October 16, 1978, "The fact is that they (Jordan Marsh) are paying more per square foot on the 121A agreement than they were prior to the 121A on less total land area..." Although this statement is true, it is misleading since it is common knowledge that assessments on retail property are based on capitalization of income and not on actual market value per square foot.² Since Jordan Marsh is doing the same sales volume in 825,000 square feet of space that it did in 1.7 million square feet, its taxes should rise as the tax rate rises. In fact, its taxes have been reduced. The reduction will become even more pronounced during the 40-year life of the 121A agreement.

Jordan Marsh began reconstructing its store in 1976. Under the Lafayette Place Construction Schedule, Tezé was to begin construction on phase I (retail elements and hotel, south of Bedford Street) of his project in February of 1977 eight months after

¹Actually, the taxes due may have been even higher under typical Assessing Department procedures because the \$11,375,600 represents an assessment dating back to 1970.

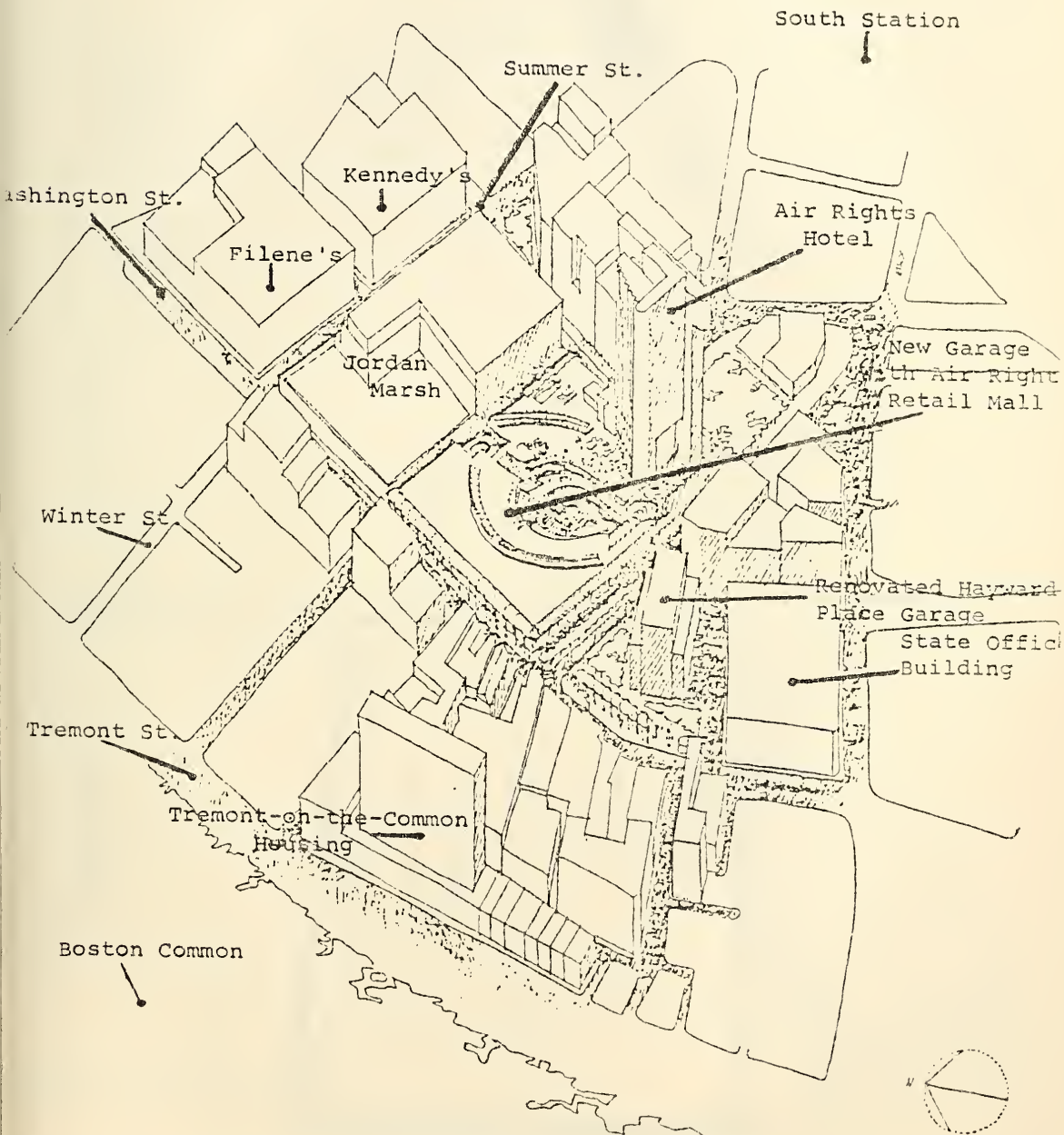
²In a deposition taken on February 16, 1978 in the cases of Baykin, et al v. Cameron and Berman, et al v. Cameron, et al, John D. Moore, District Director of the City of Boston Assessing Department stated that "most of all properties or the valuations are set by the capitalization of income."

the scheduled construction start on Jordan Marsh. Though Tezé was attempting to interest a second department store into anchoring the southern end of the mall and secure financing for the project, the state of the national economy had deteriorated substantially and Tezé encountered problems on both fronts. Major retailers who were interested in expanding were looking toward the suburbs and showed little enthusiasm for building in the city. Tezé's negotiations with several retailers floundered and by the end of 1976 it became evident that he would be unsuccessful in securing a second department store for the project. The prospect of a one-anchor mall with only Jordan Marsh, coupled with the general poor health of the economy, made it impossible for Tezé to secure financing for the project. A brief effort was made to incorporate a "family entertainment center" into the project as a replacement for the second department store, but that also failed to attract financing for the project.

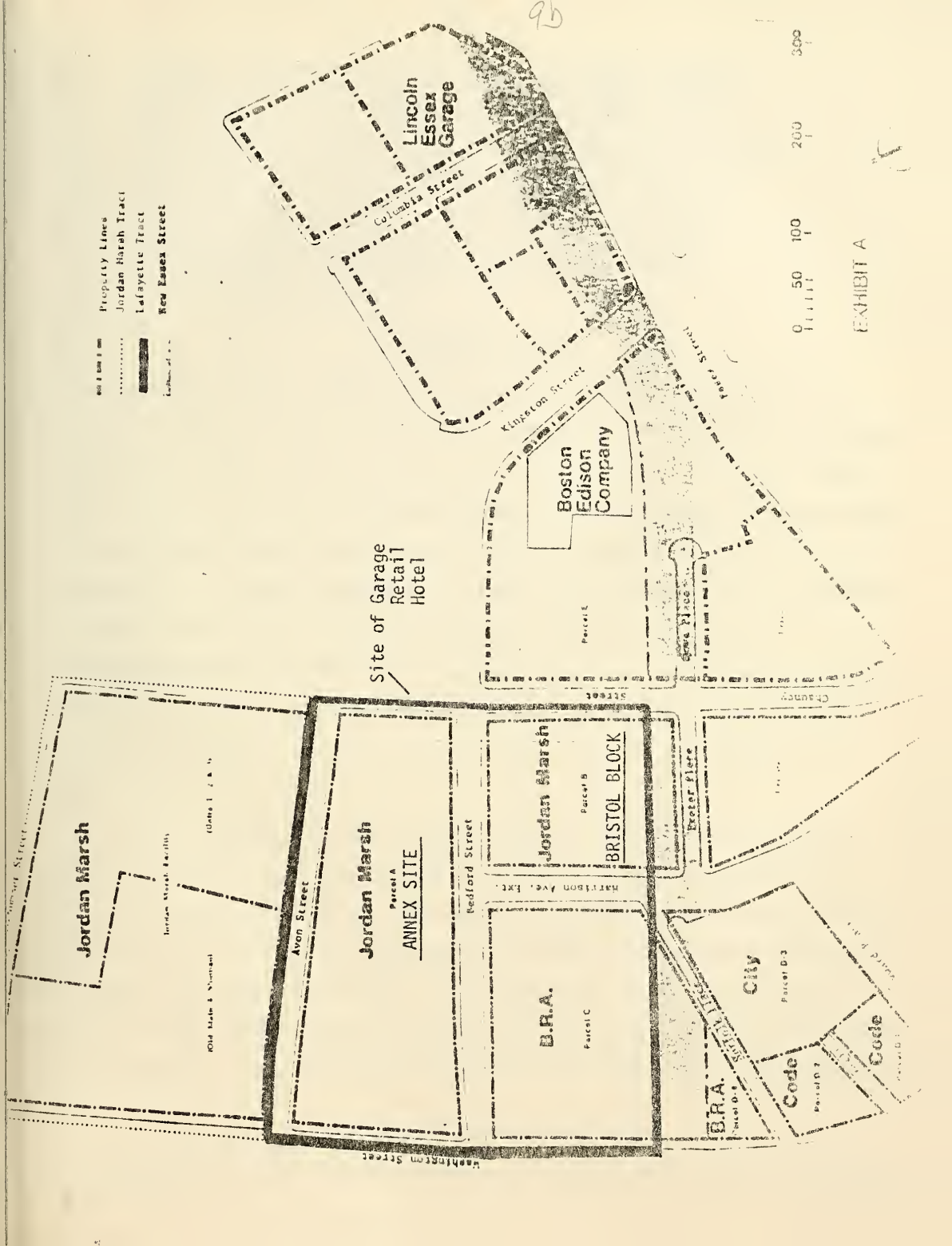
During this period, while Lafayette Place floundered, the Jordan Marsh reconstruction moved forward, evidencing the fact that the two projects could be conceived as separate entities. Because Tezé could not move forward on his part of the project, the city did not acquire the land for, or begin construction of the garage. This delay on the city's part, authorized by agreement, between the city and Tezé, made it certain that the public expenditures would not be made before it was absolutely guaranteed that the private elements of the project were progressing smoothly.

In the spring of 1977, it was evident that Tezé's original Lafayette Place Plan could not be built as anticipated. In an effort to re-plan Lafayette Place, Tezé made an agreement with Mondev International, a Canadian development firm, to become a joint venturer with Sefrius in redesigning the entire project. When questioned about Mondev's role in redesigning the project, Joseph Berlandi testified before the Finance Commission:

NEW LAFAYETTE PLACE 3-DIMENSIONAL PERSPECTIVE
INCLUDING ADJACENT STREETS



- Property Lines
- Jordan Marsh Tract
- Lafayette Tract
- Rev Essex Street
- Location of ...



"Mondev really took over the new plan. They engaged Mitchell Guirgolo. Sefrius had engaged I.M. Pei originally. Mondev came in and in a sense brought in a whole new team, again to breathe new life into this project that was sort of dying. And they brought in Mitchell Guirgolo, the architects from New York, and a whole set of their own consultants, and they looked at the project fresh. Sefrius sort of stepped back and said to Mondev, 'Okay, you look at it as if I'm not here and be as critical as you want, just see if, if you can do something that makes sense.' So they came in with a whole new plan which they felt made some sense from a design standpoint and from an economic standpoint."

THE MONDEV PLAN

By the Summer of 1977, Mondev had substantially revised the Lafayette Place Plan. The new plan, which was submitted to the BRA, called for the initial development by the city of a 900-car underground garage on 5.3 acres of land. The site included the Annex and Bristol parcels, the BRA owned parcel (former Raymond's site) and several small parcels owned by Code Realty, Inc. Six hundred additional parking spaces would be provided in a "renovated" Hayward Place Garage. Mondev proposed developing 300,000 gross square feet of retail space and a 450-room hotel above the underground garage. The retail mall would not contain a new department store but instead would be horseshoe shaped, enabling Jordan Marsh to be the sole anchor. In addition to abandoning the second department store, the Mondev Plan also excluded the 1.2 million square feet of office space.

The Mondev proposal translates into the following financial terms. The city was still expected to spend approximately \$30 million. Instead of spending \$19.2 million on an above-grade, 1500-car parking garage on the Edison site, the city would spend \$22 million to acquire the Allied land, construct a 900-car garage on that site and renovate the Hayward Place Garage.¹ The remaining \$8 million dollars would go toward public improvements within the project area, including a \$4 million plaza within the shopping mall. Although the city's expenditures remained stable, substantial changes

¹Renovation of Hayward Place would consist of removing the elevators and replacing them with ramps.

were made in the developer's obligations. Instead of investing \$150 million, which was proposed in the Sefrius plan, Mondev proposed a private expenditure of \$50 million; \$18 million for the retail element and \$32 million for the hotel. This 66% reduction in proposed private expenditure shifted the original expenditure ratio from 5:1 (83% private to 17% public) to a ratio of 1.67:1 (63% private to 37% public).

After Mondev presented its proposal to the BRA, BRA staff members set out to evaluate the new project. Joseph Berlandi prepared an initial draft analysis of the plan which he presented in the form of a memorandum dated July 27, 1977 to BRA staff members, Peter Menconeri, Edward Lonergan and James Derba. Berlandi's memo evaluated the proposed change in the city's contribution as follows:

"The difference (between the Mondev and Sefrius plans) is that Mondev is asking us to take the monies originally scheduled to assemble the Edison and adjacent properties for the parking facility and New Essex Street construction and apply them (\$9.1 million) towards the acquisition of the Allied land... Mondev has also agreed to absorb all garage construction costs above the \$13.2 million the city approved for the Edison site facility and all costs for air rights foundations over the garage. The BRA/city would then own all of the Phase I site and lease the air rights over the underground parking facility to Mondev for the hotel and retail.

At first glance this seems reasonable. However, it might create an unfavorable political and development posture for the BRA/city. The public commitment was based upon our acquiring the Edison land for a portion of the garage site. I believe that it would be very difficult for us to go back to the City Council and seek approval to apply those funds (approximately \$6 million) to purchase Allied's land. Secondly, the original proposal called for a Phase II over the retail complex and also over the parking garage. To eliminate the Edison site from any future development would diminish the ultimate development potential, thereby significantly reducing anticipated tax revenues to the city. Although it makes sense to consolidate the retail, hotel and parking on a smaller Phase I parcel, the city will have difficulty justifying a \$30 million investment if we cannot reasonably assure a Phase II development.

While Berlandi was not in full support of the Mondev plan, other BRA staff members were also voicing concern over the new terms (which were being promoted by both the developer and Allied's Vice President Frank, who was now exerting pressure on the city to move forward on the stalled development.) Allied's reconstructed Jordan Marsh

store was nearing completion and it was anxious to have its facility enhanced by the development while disposing of its now vacant land below Avon Street. (Additionally, Allied wanted the \$2 million it invested in the underground service ramp picked up by the Developer.)

Under a final agreement worked out with Teze in the original Lafayette Place plan, Allied was to receive \$9.5 million in cash for its land in addition to a \$4 million equity position in the project. Although Teze's original \$150 million project may have supported such a high price for the Allied land, it was clear that Mondev's \$50 million project, coupled with the city's \$13 million garage did not support that figure.¹

Under the revised plan, Mondev was asking the city to purchase Allied's property, priced by Allied at \$5 million, up front, in addition to demolition costs of \$605,000.² In August of 1977 the BRA began negotiations with Allied's Frank, concerning the proposed purchase.³ According to Robert Walsh, Stewart Forbes, Deputy Director for Development, was principally responsible for negotiating the city's position with the assistance of Joseph Berlandi and Peter Menconeri, Finance and Development Analyst. Respecting those negotiations, Walsh testified before the Finance Commission:

¹ Stewart Forbes, in a memorandum to Robert Walsh dated August 10, 1977, indicated that the original land purchase deal between Sefrius and Allied was unrealistic. Forbes stated: "From Allied's standpoint, the problem is that the project was oversold internally and far too tough a deal was struck with the developer who was required to make an up-front investment of almost \$12 million to pay off Allied, demolish the structures and construct the ramp. No developer could assume such obligations without anticipating that they would be modified substantially in the course of the development which, in fact, has occurred."

Furthermore, even if the original price for the land was realistic, the revised plan does not support that price. Land value is directly related to the development potential of the land, i.e. "highest and best use." Originally, the Allied land was to be used for a \$185 million development. That was considered to be the land's "highest and best use" until it became obvious that the developer could not secure financing and build the project. The new \$85 million plan, which abandons the second department store and office complex, is evidence of the fact that the development potential of the land is not what it was believed to have been. Therefore, the value of the land is reduced.

² Although this price appears to be much lower than the price agreed upon under the original Lafayette Place plan, the developer was also required to pay Allied for easements appurtenant to the land including \$2 million for the truck ramp and an additional fee for the "right" to have Jordan Marsh anchor the proposed shopping mall.

³ Although the Real Property Board would be purchasing the land, the BRA was responsible for planning the project, including negotiating for the purchase of the land

I don't think that there was much debate about the price of the land. The debate was in terms of how you would take down the land or how you would pay [for] it. What the terms of the sale would be, not the actual dollar amount...I personally didn't have much of a question as far as the value.

Although Walsh did not take issue with the price that Allied was asking for the property, Forbes had advised him that the value Allied assigned to the land was tied directly to the anticipated income from the completed project, and therefore Allied should not be paid for the property until the developer completed the project. Under this type of arrangement, the city would not be paying for the property until the actual value was established. In a memo to Walsh dated August 10, 1977, Forbes said:

My basic problem with the proposal presented to us by Allied Stores is the request to pay them \$5 million for their land prior to evidence that the proposed project has been completed and occupied. From the beginning, the importance of the project and the needs of the area have tended to build up expectations beyond the capacity of any development or developers.

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The developer claims the above numbers [rental projections for the retail element] support a land value somewhere between \$3 million and \$4 million, 50% of which would be offered to the City in the form of a lease of air rights for a period of 75 years at a rate of \$100,000 per year. If one discounts these lease payments, their present value would be somewhere in the area of \$1.5 to \$2 million which would essentially be the value the City would receive for the land that Allied has asked us to buy for \$5 million. I personally, find it difficult to justify a subsidy in this amount when Allied will be the primary beneficiary of the development and when the City, in addition, is being asked to invest over \$13 million in the construction of a new garage. (emphasis added)

While not disputing that prior agreements had been made on the garage, it should be recognized that our estimated cost per space without land is over \$12,500 and with a \$5 million payment to Allied, would exceed \$18,000 per space. The payment to Allied works out to over \$5,500 per space which is close to the total development cost per space for a conventional garage.

Forbes' memo further suggested to Walsh the following alternative to the Allied proposal:

I would like to eliminate the potential difference between what we pay for the land and what its value will be to the developer, by agreeing that we would construct the parking facility on land owned by Allied in such a way that Mondev can make whatever modifications are necessary to insure the utilization of air rights. Thus, the payment to Allied would be directly linked to the value that could be generated by the air rights development.

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My recommendation is to reject the proposal unless it can be modified in accordance with the above. While appreciating the importance of stimulating private investment on Washington Street, I feel that that objective is more likely to be achieved with Allied participating in the development by investing their land in whatever project is proposed and thereby becoming a participant in the development. At this point in time, given the offer we have obtained from Mondev, there is no assurance that, were we to make commitments being requested, development would occur. I strongly urge that any commitments you decide to make are conditioned upon satisfactory evidence of financial feasibility and a specific time period in which to start construction.

Walsh, recognizing that the Mondev plan drastically reduced the city's protection,¹ accepted Forbes' recommendation that the city avoid purchasing the land "up front" and over-expose itself prior to a guarantee that the developer would fulfill his obligations. Echoing Forbes' sentiments, Walsh stated the following to Ben Frank in a letter dated August 11, 1977:

While recognizing that substantial funding will be required in order to get this project underway, I am not certain what level of investment is required and what degree of certainty there is that with such investment a project can be privately financed and ultimately built. Before re-allocating prior commitments or making any new ones, I would like to have greater assurances that public action will trigger the anticipated private investment.

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¹Under the original Lafayette Place plan, both private and public expenditures were scheduled to occur simultaneously, thus protecting the city and guaranteeing that the developer would fulfill his obligations. Under the new Mondev plan, the city was being asked to purchase the land, the value of which was based on the completed development, and build the underground garage prior to the developer's commencing to fulfill his obligations. One possible result of this arrangement would be that the city would purchase the land and build the garage, but the developer might default and not fulfill his obligation to build the retail and hotel. If this were to happen the city would have already paid \$5 million for land that in reality was worth much less because it was being used only for a garage without a mall and hotel.

The problem caused by the initial financial demand on the developer has been addressed in our recent discussions by a request that the city assume a major portion of these obligations. While not eliminating the possibility that as we obtain further evidence of the feasibility of the project, such a payment would be justified, I do not believe a commitment of this magnitude is appropriate at this time. Ideally, I would like to build a garage on your property and relate any payment for the land to the value of the air rights that results from the construction of a public garage and the additional private investment.

Allied flatly rejected Walsh's offer to build the garage on its land and to then link the payment for the land to the value generated by whatever was ultimately developed. Allied's rejection of that proposal was probably based on the argument that it had already taken a large risk by reconstructing its store before any guarantees were made that the project would be built. In reality, Allied did risk the prospect of being stuck with surplus land and the entire cost of the truck ramp when it went forward with its project, but it had only to benefit from its reconstruction, even if Lafayette Place was never built. Although Jordan Marsh would be the primary beneficiary from Lafayette Place and the city's garage would principally serve its store, the fact that it rejected Walsh's offer was an obvious indication that it was not willing to share any further risk involved in the project.

By October 1977, it appeared that the entire Lafayette Place Project hinged on the city's willingness to acquire the Allied land. Although Walsh was now willing to have the city pay \$5 million (the developers would pay Allied an additional \$3.65 million for the easements), agreement could not be reached on the terms of the payment and how much participation Allied would ultimately assume in the project. In an effort to force the city into agreeing to its terms, that payment occurred upon completion of the garage, Allied began pressuring the developer to guarantee the purchase of its land. Sefrius-Mondey obviously could not agree to that, since the "up front" purchase of the Allied land, they contended, was that originally inhibited their ability to finance the project.

By mid-October, Walsh and Frank had agreed on the \$5 million total and that \$500,000 would be paid on closing. Walsh remained firm in his desire to

hold back payment of the \$4.5 million balance until there were sufficient guarantees that the private development would occur, i.e. commencement of construction on the retail element. Allied, in turn, wanted the balance to be paid upon completion of the garage, or 24 months from closing, whichever occurred first.

Although no agreement on the terms had been reached between Frank and Walsh, the Real Property Board publicly voted on October 18, 1977 to authorize the Chairman to enter into an agreement to purchase the Allied land. That vote further stated:

...the purchase price, subject to appraisal, shall be in an amount not to exceed \$8,650,000, and shall be paid as follows:

- 1) \$5,000,000 to be paid by the Real Property Board in the name and on behalf of the City of Boston to Alstores Realty Corporation, as follows:
 - a) \$500,000 at the time of the acquisition of such land, improvements and appurtenant rights;
 - b) \$4,500,000 at the completion of construction of the proposed Lafayette Place parking garage within such area or the second anniversary of such acquisition, whichever is earlier; and
- 2) \$3,650,000 to be paid by Mondev-Sefrius or its nominee to Alstores Realty Corporation on behalf of and at the direction of the City of Boston as follows:
 - a) \$1,650,000 on or before December 31, 1977;
 - b) \$2,000,000 in ten equal installments commencing on the first anniversary of the acquisition of such land, improvements and appurtenant rights.

Although the purpose of the Real Property Board's vote may have been to move the project forward, the Board's agreement to Allied's terms effectively diminished the city's bargaining position with Allied. Respecting the timing of that vote, Robert Walsh testified as follows before the Finance Commission:

Question: What stage were the negotiations in when that vote took place, the negotiations that you and your staff were having with Allied Stores...?

Walsh: As I recall it, again I don't have the benefit of any records, we were in the phase of discussing the terms of the conveyance, in other words, what time would...Allied be paid. Related to that would be the amount of money that would be received by the city for the air rights in relation to the additional amount

of money that Allied required from the developer, or as you put it, the enhancements. So again, it was in my perspective, there was no...further debate required as far as the amount of money that the city would pay, just in terms.

Q What was your reaction to the vote which occurred on October 18?

A Surprise.

Q Why were you surprised?

A Because I had no specific or prior knowledge that a vote was going to be taken by the Real Property Board.

Since Walsh, who was ultimately responsible for negotiating with Allied, had not agreed to the terms outlined in the vote, there is a series of questions as to why, and on whose recommendation, the Real Property Board voted on the matter.

The Finance Commission attempted to determine why such an important breakdown in communications occurred. We questioned the participants in the project about their role in the vote and received conflicting answers leading us to conclude that the city's best interests were not looked after and that either people's memories are poor or someone misrepresented the truth. Although we were unable to clearly ascertain who prepared the final votes of October 18, 1977 we discussed the vote with the principal participants.

Benjamin Frank explained to the Finance Commission that he was primarily responsible for negotiations conducted by Allied. In connection with the vote of October 18, 1977, Frank explained that Allied drafted resolutions and submitted them to the Real Property Board and from there he just assumed they were reviewed by the appropriate city officials prior to any formal action. Although we cannot be sure of the content of resolutions offered by Frank, we are confident that they expressed terms acceptable to Allied. We also know that the final vote contained terms which, if not directly prepared by Allied, were acceptable to them but not to BRA Director Walsh.

The Allied position was rather clear with Frank handling the negotiations. However, the city's position was unclear and although there were several people responsible for various aspects of the project, none claimed authorship of the October 18, 1977 vote, which ended the negotiations. Prevost testified before the Finance Commission that when she was approached by Walsh about the timing of the vote, she responded by saying:

I told him that it was none of his business. It was my garage and I was building it and if he didn't talk to his staff, it was his hard luck.

Unfortunately, Prevost is mistaken as to whose hard luck was at stake. The city was the loser.

Prevost explained that the Boston Redevelopment Authority acts as her technical staff in matters such as these and that in this case her direction "mainly came from Joseph Berlandi." The following testimony concerning the timing

and preparation of the vote.

Question: Did the BRA prepare all the votes for you that were taken on that day concerning Lafayette Place?

Prevost: Well, I assume that they were from - if they weren't prepared by the BRA, they came through the BRA to us, let me put it that way.

Question: So the BRA told you it's ready to vote on?

Prevost: Was aware of it. At least Joe Berlandi was aware of it. Whether or not he prepared it -

* * * * *
Question: Did it come from him, in that specific instance, that you vote to enter into that agreement?

Prevost: Joe Berlandi, as the project director, was assigned by both Bob Kenney and by Bob Walsh to honcho this program for the BRA and the cooperative agreement with the Real Property Department. All the votes that we ever took concerning Lafayette Place, Joe was aware of.

Question: Prior to the vote? To the actual taking of the vote?

Prevost: Are you saying - 'Was he on October 18th aware that I was going to vote on October 18th?

Question: Yes.

Prevost: I couldn't tell you, I don't remember. Whether he was aware that day.

Question: Would he have been aware -

Prevost: He would have been aware that they were sitting in the office waiting to be voted on. Whether we voted on the 15th, the 16th, the 17th, the 18th or 19th, he would have been aware that they were there and the context of them would have come through him to us. Yes, he would have been aware of that.

Robert Walsh, who stated that he had no prior knowledge that the Real Property Board would vote on the matter offered the following testimony:

Question: At the time, did you think that anyone from the BRA had directed her (Prevost) to go forward on that vote?

Prevost: No I did not.

Question: Did you ever ask Mr. Berlandi if he had contacted the Real Property Board concerning that vote?

Prevost: I asked all the involved staff, including Mr. Berlandi, whether or not they had been involved in that vote and I was assured by all of them that they did not participate in the vote and the drafting of the vote at all.

Q And Mr. Berlandi assured you of that?

A Yes he did.

Project Director Joseph Berlandi testified before the Finance Commission that he was not aware that the vote was going to take place when it did and that he did not prepare the vote. However, he also stated, relative to the vote of the Real Property Board:

The information that is contained in those votes was information that had been discussed between the BRA, the director, the Real Property Board and the Commissioner of Real Property Board over a period of months. There was nothing new in those votes that hadn't been discussed and approved previously.

Berlandi's testimony is inconsistent with a memo he had prepared to Stewart Forbes dated October 20, 1977, two days after the Real Property Board vote. In that memo he informs Forbes that while discussing the matter with Ben Frank, he was told that the only issue unresolved was whether the \$4.5 million was to be paid upon completion of the garage construction or upon commencement of the retail construction. The payment of the \$4.5 million was very significant and the basis of Walsh's concern with the Real Property Board vote.

The Finance Commission cannot understand how such a significant vote as that taken by the Real Property Board on October 18, 1977 could occur without those involved being fully aware of the vote and its consequences. Based on the testimony we received, it is clear that the key people involved acted irresponsibly. Ms. Prevost claims that her technical expertise came from the BRA. That expertise was provided primarily by Joseph Berlandi and she explained that if Berlandi did not actually prepare the vote it would have gone through him. Berlandi explained that he was not aware of the votes but that the content had been agreed upon previously by all parties. Robert Walsh stated that he knew nothing of the votes and was surprised to learn of them as he was still negotiating specific terms with Allied. The Finance Commission can only conclude that someone was less than truthful in testimony presented to us.

In spite of the October 18th vote, Allied was not satisfied that the city and developers were moving fast enough on the project. Relative to Allied's continued impatience after the vote, Robert Walsh testified:

...Mr. Macioce, the president or chairman of Allied, who was apparently somewhat frustrated over the lack of activity and progress in the project, had issued orders to Ben Frank to either, in effect, close the deal...or get out. And as evidence that the deal would go through, Allied required an additional payment of \$1 million¹ by the developer as really an act of good faith that they were going to proceed and that the city would adhere to a rather complicated set of conditions in terms of liability. That occurred at the end of October.

The "evidence that the deal would go through" was included in a "letter of understanding" which was signed by the mayor, Allied, and the developers on October 31, 1977. The letter of understanding incorporated the Real Property Board votes into what was, in effect, a statement that the parties (primarily the city) had accepted the Mondev plan. Included in that letter were the following immediate provisions as evidence of that acceptance:

- 1) A requirement that the city provide the developer with a written statement within 30 days of the amount of property taxes to be paid by the developer for the air rights development.
- 2) A requirement that the city commission appraisals of the Allied property to be completed within 30 days.
- 3) The city has caused the developer to deposit \$1.65 million against the total \$8.65 million purchase price of the Allied land.

¹The developers had already deposited \$650,000 with Allied against their \$3.65 million share of the purchase.

Upon signing the "letter of understanding" on October 31, the BRA promptly began negotiating with the developers, the terms of a Ch. 121A tax agreement for the air rights development.¹ Although Sefrius did not request a 121A agreement for the original project as presented in 1975, the developers did require, and the city agreed to provide, that additional subsidy for the revised project. An agreement was reached between Walsh and the developers by late November. The terms of that agreement were then written into a letter of understanding, dated December 28, 1977 and signed by the Mayor's Select Committee for Chapter 121A for the City of Boston (Robert Walsh, James Young and Edward Sullivan). This letter of understanding sets forth the following four phased tax payment system which will presumably be incorporated into a formal 6A contract:

Phase I - This will cover the period during construction up to and including six months after the issuance of all necessary certificates of occupancy for the entire development, including both the hotel and retail portions of the project.

Payments in lieu of taxes during Phase I for both the hotel and the retail portions of the project shall be the minimum payments allowed under Ch. 121A.

Phase II - Following the end of Phase I, this will cover the period of time, not to exceed twelve months, necessary for the hotel and retail to reach their break even points. It is agreed that the break even point for the hotel shall be 70% room occupancy and for the retail it shall be 85% of the rentable space under lease.

Payments in lieu of taxes for the hotel during Phase II shall be 3% of room sales, with no minimum guarantee.

¹Testimony before the Finance Commission revealed that Robert Walsh was principally responsible for negotiating the Lafayette Place 121A. Walsh did receive some limited assistance from Stewart Forbes but Forbes did not play an active role in the negotiations after it became clear to him that the developer would not accept terms which he felt were appropriate. The newly formed Mayor's Select Committee on Chapter 121A for the City of Boston did review and sign the agreement that Walsh negotiated but apparently the Committee had limited input into the formulation of the terms of the agreement.

Payments in lieu of taxes for the retail portion of the project shall be 12% of adjusted gross rental. Adjusted gross rental is defined as the total base rent, plus percentage overages, plus all reimbursement to the development for common area expenses and utilities. As with the hotel portion, there shall be no minimum guarantee on the retail portion of the project during Phase II.

Phase III - This shall cover that period of time between the end of Phase II and five years after the end of Phase I; i.e., the first five years of operation after the end of Phase I.

Taxes on the hotel shall be 3% of the room sales with a guaranteed minimum of \$100,000 per year.

Taxes on the retail shall be 23% of the adjusted gross rental. However, it is agreed that during Phase III, the payment in lieu of real estate taxes for the retail portion of the project will not exceed \$3.00 per square foot for the first year and \$3.10, \$3.20, \$3.30, and \$3.40 per square foot for the next four years respectively.

Phase IV - This shall cover the period commencing with the end of Phase III and continuing until the end of the term of the 121A contract.

Taxes on the hotel shall be 5% of room sales on the first 75% of occupancy, 6.5% of room sales between 75% and 85% of occupancy, and 10% of room sales in excess of 85%. The minimum payment in lieu of real estate taxes for the hotel shall be \$800 per room during Phase III.(sic)

Payment in lieu of taxes on the retail portion of the project shall be 23% of adjusted gross rental with no square foot maximum such as is included in Phase III.

The proposed Lafayette Place 121A tax agreement, which will generate approximately \$1 million per year after 5 years, is the result of the tightening up process that was promised by the mayor when he lifted his year long moratorium on the granting of 121A's in November of 1977. However, except for the fact that the term of this agreement is 15 years (reduced from 40 years as promised by the mayor), the Finance Commission finds it not to be in the best interest of the city.

The initial problem with the agreement stems from the fact that Phase I has the potential for lasting indefinitely. The Lafayette Place Tripartite Agreement (contract between the City, BRA and Mondev-Sefrius) provides the developer with the option to request separate certificates of completion for each component of the project. In addition, the agreement does not require the developer to adhere to a time schedule for constructing the hotel and retail. Since Phase II of the 121A is triggered upon completion of the entire development, there is no

guarantee detailing when, or even if it will occur. If the developer completes and occupies the retail component and then for some reason is delayed or does not construct the hotel at all, 121A payments on the already income producing retail segment will remain at the Phase I minimum level. This loophole could conceivably cost the city millions of dollars.

In addition to allowing one component to remain at Phase I while the other component is being built, the payments under this agreement are below the level which the BRA is trying to achieve on newly negotiated 121A's. Under informal guidelines being utilized by the BRA, hotel payments are expected to start at \$800 per room or 4% of room sales in Phase II and work up to 6% of room sales and 2% of food and beverage sales in Phase IV.¹ Furthermore, retail developments are expected to pay 23% of adjusted gross income by Phase II and work up to 25-28% by Phase IV.

As a justification for the favorable terms which were reached in this agreement, the developers have argued that the city must grant a special subsidy for the hotel because of its location next to the "combat zone." Although it is a concern to be located in this area, the city's purchasing the land and building the garage is in itself a very reasonable subsidy. Furthermore, since Allied based the value of their land (and the BRA and developers accepted that value) on the fact that it was contiguous to the "100% retail corner" (Washington and Summer Streets), there is less of a reason to subsidize the retail component of the development.

¹Hotels are taxed on both room sales and food and beverage sales so as to equalize the taxation on commercial and residential hotels. Since the Lafayette Place tax formula is only based on room sales, the hotel's restaurants, bars and convention facilities will be untaxed by the city.

One essential aspect of any real property transaction of the magnitude of a Lafayette Place is an accurate appraisal of the property. The Finance Commission has thoroughly reviewed the appraisal process as conducted by the city and finds it deficient in several areas. Each such area, in and of itself, is inexcusable and collectively indicates that the city did not utilize the appraisal process to protect its interests. The following problems existed in the appraisal process:

- 1) The appraisals occurred after the Real Property Board voted to purchase the land for \$8.65 million.
- 2) The appraisers were provided final figures and instructions which appear to be intended to substantiate the agreed upon purchase price.
- 3) HUD Real Property Acquisition Guidelines and a Supreme Court ruling concerning payment for enhanced value were ignored.
- 4) Even if the above problems are ignored, the appraisal finally accepted does not justify a \$5,000,000 land acquisition cost by the city.

Although the Real Property Board voted to pay Allied \$8,650,000 for their land, they took the following vote at the same meeting:

That the Chairman be hereby authorized and empowered by the Real Property Board to have appraisals made of the area in the City of Boston bounded generally by Avon Street, Chauncy Street, Exeter Place, Harrison Avenue Extension, Norfolk Place and Washington Street and rights and easements appurtenant thereto, including separate appraisals of the parcels within such area owned by the Boston Redevelopment Authority and Alstores (Allied) Realty Corporation, and separate appraisals of the air rights and the land included in such area. (emphasis added)

Conducting an appraisal after the fact seemed rather unusual to the Finance Commission and we asked both Commissioner Prevost and Robert Walsh for an explanation. Prevost testified:

What I understand from the BRA (is) that all their development projects go this way. This is how it starts. It starts many times with the cart before the horse and you come in and you say 'you know this is the figure I want for my land.'

Walsh contradicted Prevost by stating that the normal BRA procedure was to conduct an appraisal first in order to assist in determining property value. The BRA follows HUD guidelines when negotiating the purchase of real property. Those

guidelines clearly explain that real property shall be appraised before the initiation of negotiations. Walsh could not explain why that process was not followed concerning the Allied property.

After Mayor White signed the October 31, 1977 "letter of understanding" Commissioner Prevost selected Robert Beal and William Morrissey to appraise the land. Both appraisers were provided the previously voted-on terms of the land purchase. In addition, both were furnished with information about the easements and it was suggested that those easements be considered in determining the fair market value of the land.

When the matter of appraisals was brought up at a City Council hearing on October 11, 1978, Joseph Berlandi explained that, "We asked Mr. Morrissey to look at the land just as land in the event the City was going to buy it and build a garage and do nothing else with it." However, that description of directions given to Morrissey conflicts with the background information and suggestions given to Morrissey by Berlandi in a November 9, 1977 memorandum:

The City has agreed to pay Alstores (Allied) a total of \$8,650,000 for the 84,400 square feet contained in Parcels A and B, subject to appraisal. This figures out to a cost of \$102.00 per square foot. However, it was further agreed that the developer, Mondev/Sefrius, would contribute \$3,650,000 to the City towards the acquisition cost, leaving a net cost to the City of \$5,000,000 or \$59.00 per square foot.

Alstores [Allied] was required by the City to construct a \$2 million truck ramp off Chauncy Street for loading and unloading purposes. This truck ramp is available to whomever acquires the adjacent parcels and must have a value factor. It is suggested, therefore, that the highest and best use appraisal of the parcel would consider the value of that...truck ramp as positive factors in determining the value of the property.

Morrissey, who performed his work at no cost to the city, submitted an appraisal based on the Comparable Sales Approach. He stated that he considered the proposed development and estimated the two Allied parcels to be worth \$5 million (\$4,426,265 for the land and \$573,735 for the Annex building). Although he recommended that the Annex be torn down, he considered it an asset. The Annex is being torn down with a demolition cost of \$605,000 and it may well have been considered a liability.

Robert Beal, who was paid \$10,500 for his efforts, also appraised the land at \$5 million, but added to that \$3.5 million for the value of the easements. Beal explains in the introduction of his report:

This report is predicated upon the development of the proposed Lafayette Place...We were specifically requested by the Real Property Board to determine the value of the land as enhanced by the subject development...

The fact that the city is using \$5 million in federal Urban Development Action Grant (UDAG) funds to purchase the Allied land caused the Finance Commission to review federal real property acquisition guidelines. We find the following guidelines under 42 USC Sec. 4601 et seq., Uniform Relocation Assistance and Real Property Acquisition Policies Acts of 1970, Title III, Sec. 301.

Real Property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.

Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property.

In addition, the United States Supreme Court has ruled in United States v. Cors, supra, (337 U.S. 325, 333-334):

It is not fair that the government be required to pay the enhanced price which its demand alone has created. That enhancement reflects elements of the value that was created by the urgency of its need for the article. It does not reflect what "a willing buyer would pay in cash to a willing seller," (United States v. Miller, supra, [317 U.S. 374]), in a fair market. It represents what can be exacted from the government whose demands in the emergency have created a sellers market. In this situation, as in the case of land included in a proposed project of the government, the enhanced value reflects speculation as to what the government can be compelled to pay. That is a hold-up value, not a fair market value. That is a value which the government itself created and hence in fairness should not be required to pay. (emphasis added)

It is apparent that the procedure followed by the city was not in accordance with the above and that Beal's valuation was inflated.

Another reservation of the Finance Commission concerning the appraisal involves the specifics of Beal's appraisal and the subsequent acceptance of that appraisal by the Real Property Board. Beal sets forth the following in his analysis of the property.

Our opinion of value for the vacant land of \$5,000,000 is further supported by our knowledge as appraisers and experience in the development, management, and ownership of similar type projects. We believe that an owner is willing to expend approximately \$1,000 per parking space for land acquisition which would indicate a value on the basis of 900 parking spaces to be constructed or, \$900,000.

A Redeveloper would also be willing to pay between \$5 - \$10 per square foot of retail space to be created in connection with land acquisition. In this instance, we believe the location of the proposed complex would justify an expenditure of \$7.50 per square foot of building area to land cost, or (based on 190,000 square feet)- \$1,425,000.

Given the location and the economics of the hotel, a Redeveloper would be willing to spend \$6,000 per hotel room for land acquisition, or (on the basis of 450 rooms)- \$2,700,000.

If the Beal appraisal is assumed to be valid, and apparently the Real Property Board determined it was valid as evidenced by their vote of April 11, 1978, then the terms of the land acquisition are inconsistent.¹ According to Beal the city, as owner of the garage, should spend \$900,000 for land acquisition costs. The developer should be willing to spend \$4,125,000 for land acquisition (in addition to the payment for the easements). As it is, the city is spending \$5 million for land acquisition and the developer nothing (the developer does pay for the easements and \$150,000 per year for air rights). If the Real Property Board is justifying their acquisition costs in part on the Beal appraisal, how do they justify an expense of \$5 million?

¹On April 11, 1978, the Real Property Board voted: To accept the valuation price, as appraised by Beal and Company, Inc. for approximately 1.94 acres (84,423 square feet approximate) in the central business district of Boston, as bounded by Washington, Avon, Chauncy, and Bedford Streets, Exeter Place and Harrison Avenue Extension, in connection with the proposed Lafayette Place, in the amount of \$8,500,000.

Beal attributes a \$5 million land value to the entire project (900 car garage, 450 room hotel and 190,000 square foot retail mall). However, the entire complex will be built over approximately four acres of land (not just the Allied property of 1.94 acres). Therefore, the total value of \$5 million should be assigned to the entire site. If that was done the value of the Allied parcels should be \$2,425,000 (1.94 acres equals 48.5% of 4 acres. 48.5% of \$5 million equals \$2.425 million).

Finally Beal appraised the land as being "theoretically vacant" despite the existence of the Annex building. If the city accepts Beal's judgment that the land is worth \$5 million, the cost of demolishing the Annex should be deducted from the \$5 million figure to arrive at the price Allied should receive. The City is in fact paying Allied the \$5 million in addition to assuming the cost of demolition.

AIR RIGHTS VALUATION

In addition to having the Allied land appraised, the Real Property Board, pursuant to its vote of October 18, 1977, was supposed to have the air rights over the garage appraised separately. Because this space, on which the hotel and shopping mall will be built, is to be leased by the City to the developers, it is crucial that the value of those rights be determined by an independent, objective appraisal. Unfortunately, without having such an appraisal, the city has signed a formal agreement with the developers that they will pay the city annually, "the amount equal to twenty-five percent (25%) of the net profit from the project but in no event to exceed One Hundred and Fifty Thousand Dollars (\$150,000)."¹

There is a misconception as to what the City is receiving for transferring the air rights to the developer. Proponents of the project have confused the issue to make it appear that the city is receiving a larger payment than is actually

¹Capitalized at 10%, the \$150,000 per year payment has a value of \$1.5 million.

the case. Berlandi, in testimony before the City Council and in discussions with the BBA Board, has said that the City is receiving \$3.65 million for the air rights plus an additional "bonus" of \$150,000 per year. That is simply not true.

The City is paying Allied \$5 million for its land. In addition to the city's \$5 million, the developers are paying Allied \$3.65 million for easements (use of the truck ramp, right to have Jordan Marsh anchor the mall, right to construct a passageway from the mall, through the Jordan Marsh store to Summer St., etc.). The developers are paying for these easements because they directly benefit the mall and hotel. The easements are of no monetary value to the city which is primarily concerned with constructing and operating the parking garage. Allied is being paid the \$3.65 million directly by the developers. However, the developer's direct \$3.65 million payment to Allied is termed "for the benefit and account of the city." The confusion arises from the fact that the developer's \$3.65 million payment, which actually obtains necessary easements from Allied, has also been construed as purchasing the air rights over the garage from the city. The fact of the matter is that the City is only receiving \$150,000 per year for the air rights. The confusion over this matter in the minds of city officials can, in part, be attributed to Joseph Berlandi. Berlandi appeared before the City Council's Committee on Housing and Neighborhood Development on October 6, 1978 and attempted to explain the terms of the air rights payment. Committee Chairman, Raymond Flynn asked Berlandi the following:

Joe, that air rights payment: is that in line with other developments?
What is it - \$150,000?

Berlandi responded by stating:

The \$150,000 a year is an annual payment in addition to the \$3.6 million the developer is paying for air rights.

Berlandi clearly misrepresented the facts; the \$3.65 million is being paid to Allied, not to the City. Subsequent to his testimony before the City Council, Berlandi was asked by the Finance Commission if he knew the actual area of the air rights over the garage that was being made available to the developers. Again,

Berlandi implied that the developer was purchasing the air rights for \$3.65 million. He testified:

We don't know to this point the actual square footage that the developer is going to be buying for \$3.6 million...The cost to the developer on a per square foot basis for the actual footage he's buying in air rights will be astoundingly high when we finally work it out.

Robert Walsh, who was not involved in actually negotiating the air rights payment with the developers, was also asked by the Finance Commission if he considered the \$3.65 million payment to Allied for the air rights. The following is an excerpt from Walsh's testimony:

Q Do you consider the \$3.65 million that Mondev-Sefrius is paying to Alstores (Allied) on behalf of the city, as an air rights payment?

A No I do not.

Q What do you consider that payment to be?

A I consider it a payment for certain development rights that would (be) accrued to the developer. Such as the access ramp that would be jointly used by the developer and Jordan's and I don't recall, I think there were some other specific -

Q Yes, the right to build entrances from the mall to Jordan Marsh -

A Yes, over their land.

Q So what do you consider as the air rights payment to the city?

A The air rights payment to the city, as I recall it, is the, what was agreed upon, the \$150,000 as an annual payment.

* * * * *

Q You don't consider that \$150,000 a year to be, shall we say, a "bonus" payment to the city for the air rights?

A It is my understanding, my recollection that that was the air rights payment, period.

Until the developer submits his final plans for the project, it is impossible to determine the actual area of the air rights that will be used for the hotel and shopping mall. Although an exact figure of what will be used is not known, the City will make available to the developer, for \$150,000 per year, the air rights over 4-5 acres of land including the two Allied parcels, the BRA parcel and streets to be discontinued.¹ If one accepts Beal's value of \$57.35 per square foot for the Allied land (87,169 sq. ft. @ \$57.35 per sq. ft. equals \$5 million),² and assuming that that per square foot value can be assigned to what is estimated to be the entire project site, the total land area is worth at least \$9.66 million (168,462 sq. ft. @ \$57.35/sq. ft.) Following Beal's assumption that the City should be willing to pay \$900,000 for land acquisition related to the garage, the remaining \$8,760,000 should be assigned as the value of the air rights. In addition, the City is providing the developer with direct access into the \$13 million garage, so that would further enhance the value of the air rights. Although the air rights obviously have a high value, at \$150,000 per year, the developer is only paying 89¢ per square foot.

To compare Lafayette Place with another project, the Finance Commission reviewed the air rights lease agreement the Massachusetts Turnpike Authority recently executed with Urban Development Investment Corporation (UDIC) for the Copley Place Development. Although plans for Copley Place call for a larger, more intense development than Lafayette Place, it is interesting to compare the two lease agreements.

¹The size of the entire site has not been accurately defined because it has not yet been determined if the Hayward Place garage will be demolished or what the alignment of New Essex Street will be. The site will consist of at least 168,462 square feet consisting of the 87,169 sq. ft. Allied land, 51,293 sq. ft. BRA parcel and over 30,000 sq. ft. of discontinued public streets (Avon, Bedford and Harrison Ave. Ext.)

²The \$3.65 million easements are not included for this purpose. The developer is paying Allied for those rights and easements which are of no value to the city.

The Lafayette Place air rights payment is based on the developer's net profits. The City will receive as payment for the air rights, 25% of the net profits from the development, not to exceed \$150,000 per year. Conceivably, the City could receive much less than the \$150,000 maximum.

In contrast, the Copley Place air rights lease calls for the developer to pay the Turnpike Authority a floating fee which increases dramatically over the life of the agreement. The Copley Place lease payments are as follows:

December 15, 1978	\$2,750 Initial Payment
January 1, 1979	66,000 Annual Payment
Initial Rent Increase (IRI)-January 1, 1980	140,000 Per Year
1st Anniversary of IRI	280,000 Per Year
2nd Anniversary of IRI	420,000 Per Year
3rd Anniversary of IRI	560,000 Per Year
4th Anniversary of IRI	700,000 Per Year
7th Anniversary of IRI	770,000 Per Year
8th Anniversary of IRI	840,000 Per Year
9th Anniversary of IRI	920,000 Per Year

The base rent of \$920,000 per year remains stable until the 14th Anniversary of the IRI. On the 14th Anniversary, UDIC will pay a base rent of \$920,000 plus an additional sum which will be calculated by the Consumer Price Index increase for the previous 15 years. The additional sum will not exceed \$552,000. The maximum annual rent will not exceed \$1,472,000. Payments calculated in this manner will be made annually until the 29th Anniversary of the IRI.

On the 29th Anniversary of the IRI, UDIC pays the annual base rent that was paid during the preceding 15 years plus an additional amount calculated from the Consumer Price Index increase since the 15th Anniversary of the IRI. The additional sum will not exceed \$1,324,800. Maximum annual rent will not exceed \$2,796,800.

Although the two projects may not be comparable, the method for determining the air rights payment can be compared. The City has agreed to a set maximum fee that will be diminished in value due to future inflation. Furthermore, if Lafayette Place is successful, the lease payment will not keep pace with the developers' profits once those profits exceed \$600,000 per year.

In contrast, the Turnpike Authority has leased its air rights for a fee that will increase with inflation over the life of the lease. In addition to being

insulated from inflation, the Authority will receive increased payment over time as the development generates more income.

Since the terms of the Lafayette Place air rights leasehold does not appear to reflect the estimated true value of the air rights, the Finance Commission asked Prevost and Berlandi if an appraisal had been done. Both parties stated that they considered the Beal appraisal to be an appraisal of the air rights. Berlandi testified:

It is my understanding that the appraisal of the air rights was part of the Beal appraisal...the Beal appraisal was to cover the air rights value as best as it could.

Although Berlandi and Prevost may have intended to have Beal appraise the air rights, it is clear that Beal's report cannot be construed as an appraisal, much less an accurate appraisal of the Lafayette Place air rights.

Beal was told by the city that the developers would be paying \$150,000 per year for the air rights. He then calculated, through the Land Residual Approach using unsubstantiated, speculative figures furnished by the developers, that that payment was justified in light of the income that the developer would be realizing from the project.¹ To support the \$150,000 per year figure, Beal reviewed the monetary benefits from the project that will be realized by the city. These monetary benefits consist of the following:

Air Rights Payments	\$150,000 per annum
Net Operating Profits (Garage)	1,800,000
Increased Real Estate Taxes.....	450,000
TOTAL	2,400,000 per annum

¹Sefrius-Mondey provided Beal with an income and cost projection for their components of the project. Beal stated as a qualification in the report that he accepted the developers' projection as given and did not substantiate its accuracy. As to the accuracy of the project cost figures that Beal used in his Land Residual Summation, Berlandi testified before the Finance Commission:

I would assume, as I look at it, it's a very, very initial, preliminary sheet, which is not very detailed, and it was probably done as a take off in the early stages to get a handle on what it was going to cost them. But I would have to say that it in no way reflects the existing conditions. That \$44 million is not what it's going to take to build what they are committed to build.

Unfortunately the tax figure that Beal used in his calculation is wrong. The city informed Beal that the Allied land presently generates \$550,000 annually in property taxes when in 1978 the property actually generated \$894,229.¹ Therefore, assuming as Beal did, that Lafayette Place will eventually generate \$1 million per year in taxes, the net increase is only \$105,771. If the \$2.4 million per year figure is in fact a fair return for the city, the \$344,229 incorrectly attributed to increased taxes should be added to the \$150,000 per year air rights payment.

Although Beal did the above described calculation, he did not appraise the entire air rights over the garage. The primary reason that he couldn't have accurately appraised the air rights is because, even to this day, the actual size of the project and the area of the air rights, is unknown. It therefore appears that Beal merely attempted to justify what the developer had already agreed to pay the city, by using preliminary, unsubstantiated income and cost projections which were furnished by the developer.

¹In 1978 the Bristol and Annex parcels were assessed at \$3,535,900. At the present tax rate of \$252.90, the tax on the property is \$894,229.11. According to Associate Assessing Commissioner Mathew Hanley, Jr., although Allied has applied to the Appellate Tax Board for an abatement, no abatement had been granted as of 10-26-78. Since no abatement has been granted, there is no basis for estimating that the tax on the property is any less than that which is shown on the assessor's books.

FEDERAL FUNDING

In January 1978, upon submission of an Urban Development Action Grant (UDAG) application to the Department of Housing and Urban Development (HUD), Lafayette Place officially became incorporated into the much heralded "Boston Plan". The UDAG application, which was prepared by the Office of Federal Relations in conjunction with the BRA, requested \$11,877,600 in federal funds to help finance construction of the garage.

On page 38 of the UDAG application, the City certified that it will:

In acquiring real property in connection with the Urban Development Action Grant Program, be guided to the greatest extent practicable under State Law, by the real property acquisition policies set out under Section 301 of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (P.L. 91-646)...

As previously stated in this report, Section 301 stated that the "enhanced" value of land to be acquired will be disregarded in determining the compensation to be paid for the land. In addition, Section 301 (2) stated that real property to be acquired shall be appraised prior to the initiation of negotiations. The city clearly ignored both of these guidelines respecting the Allied land purchase. Furthermore, this misrepresentation in the application appears to have been intentional since the matters affected by the Section 301 guidelines were resolved prior to submission of the application.

The authors of the application also "enhanced" certain aspects of the project. The UDAG application states, as was stated to Beal, that the property presently generates \$550,000 per year in property taxes instead of the actual \$894,229. Therefore, since the UDAG application anticipated the tax revenue from the project to be \$960,000, the net increase is only \$65,771 - not \$410,000 as stated in the application.

In addition to misstating the anticipated increase in the property taxes, the application states, "In addition, the developer will execute a leasehold payment for the air rights of \$150,000 minimum per year subject to appraisal and paid directly to the City". This statement is also erroneous since the \$150,000 per year payment is actually the maximum that the developer will pay plus the fact that the air rights

were never actually appraised.¹

Notwithstanding the fact that HUD was aware of some of the aforementioned inconsistencies in the city's application, the city was awarded \$8 million in UDAG funds to help finance the public share of the project.

REVISING AND FINALIZING THE LAFAYETTE PLACE PLAN

After the appraisals were received and the UDAG application submitted, the BRA, developers and Allied set forth to finalize the plans and draw up contracts for City Council and Mayoral approval. To help insure that private development would occur after the City made its substantial investment, Walsh insisted that the terms of the Allied land purchase be modified. Since the mayor had already signed the letter of understanding which included the terms of the purchase, something would have to be sacrificed in order to get Allied to agree to modifications. The primary reason the city was forced to make any sacrifice is because the Real Property Board had reduced the city's bargaining position by prematurely agreeing to insufficient terms back in October of 1977.

Allied and the BRA finally worked out new terms for the payment. Instead of paying Allied \$500,000 on closing and the \$4.5 million balance two years later, the city agreed to pay \$2.5 million on closing and the balance, held in escrow, will be paid upon the developers' receipt of a construction financing commitment for any part of the private development. Although this new plan helps insure that the developers will meet their obligations before Allied receives full payment, the city will sacrifice approximately \$600,000. Since the original plan deferred the \$4.5 million

¹The Lafayette Place Tripartite Agreement between the City and the Developers states:

The Air Rights Deed and Agreement shall independently obligate the Developer to make a non-cumulative annual payment to the city in an amount equal to twenty five percent (25%) of the net profits from the project but in no event to exceed One Hundred Fifty Thousand Dollars (\$150,000).

payment for two years, that money would be discounted (its value reduced). Now the city will put up the entire \$5 million at once and although \$2.5 million will be held in escrow, Allied will receive the interest on the money.

The city, BRA and developers (now known as Lafayette Place Associates), also drew up a Tripartite Agreement which outlines the responsibilities and expectations of all three parties. Included in the agreement are conditions which are meant to be the city's insurance that the private development will occur after the city completes the garage. Prior to closing on the Allied land purchase (paying \$2.5 million in cash and placing \$2.5 million in escrow), the developer is required to furnish the BRA with evidence that permanent mortgage financing has been issued to cover the cost of the project. The developer will have to make a substantial investment, including the preparation of architectural plans, in order to obtain the permanent financing commitment and therefore the city will supposedly be guaranteed that the private development will occur. Furthermore, the developer will have already paid Allied \$3.65 million for the easements (\$1.65 million in cash and \$2 million in ten promissory notes).

Although the developer will have made a substantial investment prior to the city's purchasing the Allied land, evidence that permanent financing has been issued will not insure that development will occur after the city spends approximately \$20 million on the partial land purchase, garage construction and New Essex Street. The possibility exists that the developer may still not be able to obtain construction financing or have sufficient equity funding to bridge the gap between the permanent loan and the actual cost of the project. Respecting this problem, Stewart Forbes stated the following to Bob Walsh in a memorandum dated August 30, 1977:

In my judgment, a lender will be extremely concerned with the risk associated with the project's capacity to generate sales at this level [\$250 per sq. ft.]. At best the developer could obtain a permanent commitment conditioned to the achievement of specific rent levels. For example, assuming the retail space costs \$14 million, the permanent lender would agree to a minimum loan of perhaps \$9 million with the opportunity to qualify for additional funds as the revenue was obtained to support the increased debt.

The difference between the level of the permanent loan and actual project cost creates a significant risk for the construction lender. In the case of the Quincy Market, the Boston banks, acting as construction lenders, insisted on executed leases at rent levels sufficient to qualify for the minimum permanent loan before they would advance any funds. As small tenants are unlikely to make commitments prior to seeing the space under construction, insistence on such qualifications can preclude any development. In short, the retail portion of the S.E.F.R.I [Sefrius-Mondey] proposal will be difficult to finance and will require an unusually large amount of equity funding. Jordan's land could help this problem significantly but this apparently is not acceptable to Allied.

Since the Lafayette Place Project requires the city to make its investment before the developer begins construction on the private components, one would expect a default clause that sufficiently protects the city's investment while discouraging the developer from defaulting. Unfortunately, the city agreed to a much too lenient default clause.

After closing but prior to the start of construction on the private development, the developer can abandon the project and suffer no default penalty. Although such default will permit the city to terminate the agreement, the city might have already spent over \$20 million and will not be able to collect one penny in damages from the developer. After the developer begins construction, the only event which may be claimed as an event of default is if the developer fails to "diligently pursue such construction to completion". "Diligently" is not defined in the contract and the master schedule, while setting strict time constraints on the city, only states that the developer will begin construction within 90 days from substantial completion of the garage. Furthermore, if the developer does default after commencement of construction, the sole remedy of the city is the right to collect only \$150,000 per year in damages until the event of default is cured or substantial completion of the project is achieved. This neither protects the city's investment nor permits recovery of lost income if the garage is underutilized, which will probably occur if the hotel and mall aren't built.

In contrast to the city's meager remedy if the developer defaults, the developer is well protected if the city should default. If the city defaults after signing the Tripartite Agreement but before closing on the Allied land purchase,

the developer has the right to either collect \$3.15 million in exchange for all Project Rights and termination of the agreement or seek specific performance from the city while collecting up to \$1.5 million in damages at \$100,000 per month. If the city defaults after the closing date but prior to substantial completion of the garage, the developer may either collect \$6.15 million in exchange for the Project Rights and termination of the agreement, or seek specific performance from the city while collecting up to \$2.5 million in damages at \$100,000 per month.

Although the developer deserves the right to collect damages if the city defaults on its obligations, there is no reason why that right is accorded to the developer and not the city. The city is incurring substantial up front expense solely for the benefit of the developer. The city does not have to build an expensive 900 car underground garage. For the same price, the city could build a 1500 car above ground garage. In addition, the city is purchasing expensive land specifically for the development and is constructing an expensive new street which is certainly of less value without the private development. Although the city is incurring this substantial expense to directly enhance and benefit the private development, the Tripartite Agreement provides no remedy for the city to collect legitimate damages if the developer defaults.

No one hopes nor wants the developer to default, but a look into Mondev's past performance raises some concern. Although Mondev has successfully developed several multi-use projects such as Westmont Square in Montreal, its reputation is somewhat "mixed". Mondev has encountered difficulties in several cities. Binghamton, New York has been waiting since 1973 for Mondev to move forward on its proposed Metrocenter. In that time the planned development has shrunk considerably in size. Salem, Massachusetts declared Mondev in default on the housing component of its downtown project after it became clear that the developer was not going to move forward on construction. In Burlington, Vermont, Mondev built a relatively successful downtown project but for some reason had its share of the project bought out by its

equity partner, Fidelity Mutual Insurance Company. In Springfield, Massachusetts, Mondev was dedesignated as developer for a downtown project and finally, in Manchester, New Hampshire, Mondev proposed a project that was rejected by voters in last November's general election.

The Finance Commission asked Berlandi if the BRA investigated Mondev's reputation prior to accepting the firm as a joint venturer with Sefrius. Berlandi said that he feels Mondev has a "fairly respectable reputation" and explains:

I drove to Salem and met with the redevelopment authority in Salem. And met with them and talked to them about the project that Mondev was in fact constructing. And I had another staff member with me, James Durba, who attended that meeting with me. And we came away from that session with the redevelopment agency in Salem with nothing but the highest regard for Mondev's performance with respect to development.

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[I] met with the director of the Seattle, Washington project - he came to Boston and I met with him. And discussed Mondev's performance in Seattle. And I again received nothing but the highest regard for Mondev.

Berlandi was asked if he had spoken with anyone from Springfield, Massachusetts or Binghamton, New York. He stated that he had not because he was not aware that they were carrying out any projects in those cities. Asked if Mondev ever defaulted on an entire project or portion of a project, Berlandi stated, "I have no idea about that, no. No knowledge of that."

The Finance Commission has also checked with officials in Salem, Massachusetts but we did not reach the same conclusion as Mr. Berlandi. We were told that Mondev could not live up to its original commitment and their project in Salem was reduced. We were also told the developer was difficult to do business with and that if we checked, we would find a track record of mixed performance. As stated previously, the Finance Commission's check did reveal such a track record.

After the Tripartite Agreement and Sale and Construction Agreement was drafted, the City Council was approached for its approval. The Council's Committee on Housing and Neighborhood Development met on October 6, 1978 to evaluate the merits of the Lafayette Place Plan. At that hearing, proponents of the project attempted to convince the Council that the project had not been reduced in size and would still rejuvenate the downtown shopping area. First, Jordan Marsh presented a slide show which applauded the giant retailer for "rebuilding" its store and therefore being the catalyst for the rebirth of the retail district. Then Ben Frank showed enlarged photographs of lower Washington Street. In an effort to convince the councilors of the need for a \$33 million public investment in the area, he compared the environment to that of the South Bronx. He failed to mention that two acres of land in the South Bronx would not be valued at \$8.65 million.

Berlandi acted as spokesman in favor of the project and was responsible for explaining to the councilors the difference between the original plan and the new plan. In response to a statement by Committee Chairman Raymond Flynn about the reduction of private investment in the new plan, Berlandi stated:

That is a half-truth, half-lie type of situation, because the project that you approved in 1975, the \$200 million project, was based on a series of phases, three or four.

This project we are before you with today is the second phase of that multi-phase program which you approved in 1975.

In fact, if we extrapolate, carry out this plan we have before you today as we did in 1975, carry it out for two more phases, it will exceed \$225 million.

The point is that the first phase in the 1975 plan was for Jordan Marsh to build a \$35 million facility. They have accomplished that.

The second phase was for the developer to construct, I think it was 400,000, 500,000 square feet of retail. That is all they were going to do in the second phase of that approved plan. They were not going to build a hotel in that phase. They were going to do that in the third phase, and they were going to build office space in the fourth.

We have gotten the developer to build more now than he was in 1975. They are going to build 300,000 square feet of retail in this phase plus 100,000 square feet of office plus a 500 room hotel. That is approximately \$78 million being committed by the developer in Phase 2. The last time around

they were committing about \$40 million in Phase 2.

So I just wanted to clear that up. After Phase 2 there might be - ten years from now, whenever we complete the project - other phases, and they will add to the cost of this project from the development side. I just hope it's clear.

The above statement does not clarify the changes which have occurred in the project. It distorts those changes so as to make it appear that the city is getting something it isn't.

The revised plan does not represent the second phase of the original 1975 plan. It in fact replaced that original \$150 million project with a much smaller project. Although the developer was scheduled to build only a section of the retail and hotel in Phase II of the original plan, the staging of that plan virtually insured that additional retail would be built in subsequent phases.¹ According to a BRA guide on Lafayette Place published in April, 1975, the initial phase of the developer's activity was to consist of construction south of Bedford Street. This allowed the developer to begin construction before Jordan Marsh completed its new building and demolished its Annex. The subsequent phase of the developer's activity, north of Bedford Street, was scheduled to begin sixteen months later, when the Allied land was cleared and available. Under this arrangement, the subsequent phase of the developer's activity was essentially guaranteed because it consisted of the actual link that would connect the development with its northern anchor, Jordan Marsh.

There are no such guarantees in the new Lafayette Place Plan. There is hope that subsequent phases will occur, but there is no insurance whatsoever that the total private development will include any more than the proposed retail mall and hotel.

Berlandi implied that subsequent phases would occur and even stated to the Council:

...the private investment really has not decreased, it's increased. The private commitment in this phase that we are before you on today has increased from the private commitment in the same phase approved by this Council in 1975.

¹The developer was not tightly committed to build the 1.2 million sq. ft. of office space. Although office space was in fact planned, it was to be built over a period of time in accordance with demand.

They were committed to build \$40 million in this phase, and now they are committing to build \$78 million worth of development. Again, if you take Phase 3 and 4, which we have not given you figures for, which I can, we can estimate what Phase 3 is.

The Finance Commission requested those plans and financial projections for Phase 3 and Phase 4. Berlandi responded by letter, stating:

I believe that I have been quite consistent with my comments that we hope and reasonably expect Lafayette Place to be expanded as Phase I gets underway. We obviously have no specific plans or financial information on this matter.

Since there are no specific plans for subsequent phases, Berlandi had no basis for estimating in his original statement that the new project will exceed \$225 million worth of investment.

In addition to implying that there will be development which has not been planned, Berlandi misstated what the developer is actually committed to build in the new project. Although it is acceptable to say that the developer is building 300,000 square feet of retail, it should have been made clear that that is really around 190,000 square feet of net leaseable space. Also, it has not been determined that the hotel will be 500 rooms since the Tripartite Agreement commits the developer to build a hotel containing between 450 and 500 rooms. Furthermore, there is absolutely no commitment on the part of the developer to build any office space whatsoever. The Tripartite Agreement merely states in the Development Program, "Private commercial and office space is contemplated above the retail complex." Although there is no commitment for this component, Berlandi went so far as to inform the Council that the supposed office space will generate \$300,000 per year in 121A tax payments. There is no basis for that statement since the 121A "letter of understanding" does not even mention office space.

Berlandi also stated at the October 6, 1978 City Council hearing that the developers are committing approximately \$78 million under the Mondev plan. The Finance Commission found this statement to be somewhat curious since the developers had furnished Beal with a breakdown of project costs that show a total cost of \$44,965,000 before land payments. With land and air rights payments of approximately \$5 million,¹ the developers' total commitment would therefore be approximately \$50

¹\$3.65 million to Allied plus \$1.5 million (\$150,000 capitalized @ 10%)

Since the developers furnished Beal with the \$44,965,000 breakdown back in the fall of 1977, the Finance Commission asked Berlandi if the Mondev plan has changed since Beal performed his appraisal. Berlandi responded that very little changes have occurred. Asked to then reconcile his statement, that the developers are committing \$78 million, with the developers' own 1977 estimate of \$44,965,000, Berlandi stated:

Costs have increased. They have a more, this was done, I would assume, again, I don't know who prepared, I didn't prepare this letter, I don't know who did. I would assume, and I look at it, it's a very, very initial, preliminary sheet, which is not very detailed, and it was probably done as a take off in the early stages to get a handle on what it was going to cost them. But I would have to say that it in no way reflects the existing conditions. That 44 million dollars is not what it's going to take to build what they are committed to build. I would say that this document has gone through many, many revisions and updating in terms of cost estimates, and the cost estimate of 70 million dollars is more appropriate than 44 million dollars.

The Finance Commission asked Berlandi if he had a revised breakdown similar in form to the one Beal received.¹ Berlandi stated that he had total cost figures for the hotel and retail but he did not have a detailed breakdown for the project. Although project costs may have in fact risen and the developers may be committing more than they projected in the fall of 1977, the Finance Commission finds it astounding, in light of statements before us and the City Council, that the BRA's Project Director does not have a detailed cost breakdown showing exactly where the developer is making his investment. Although the BRA will be furnished with this information when the developer submits his evidence of financing, the Authority should have reviewed and analyzed this information long before the project was presented to, and approved by the Mayor and Council.

¹The breakdown Beal received showed Construction Cost, Indirect Cost, Furnishing, Fixtures and Equipment, Working Capital and Preopening Costs, Financing Costs & Rent-up Allowance/Initial Operating Losses.

Peter Howlett, Vice President of Mondev International also testified at the October 6, City Council hearing. In response to statements made by the Finance Commission concerning the cost of the Lafayette Place land assembly, Howlett stated:

I think it's been said often enough, but I think it might be useful to repeat it: that the major portion of this acquisition is to be paid for by the developer in this case.

For the Allied land alone, the City is paying \$5 million plus \$605,000 for demolition while the developer is only paying \$3.65 million. That, in addition to the fact that the City is assuming the cost of the BRA parcel and donating the land on which public streets now exist, makes Mr. Howlett's assertion inaccurate.

In addition to the aforementioned, proponents of the project also stated that Allied had met its obligation by investing \$35 million in the Jordan Marsh reconstruction, therefore implying that it is now time for the City to move forward on its obligation. The Finance Commission acquired, under subpoena, from Berlandi's files a memorandum showing the estimated total development cost of the Jordan Marsh Project. Although the memorandum shows a total cost of \$36,168,504; \$9.28 million was included as the cost of land acquired by Al-Jordan Realty Corporation (Allied's 121A entity). This cost is questionable since the bulk of the land was sold to Al-Jordan by Alstores Realty Corporation, another subsidiary of Allied. Furthermore, the \$36 million total figure included a \$6,885,000 cost for existing buildings (the Main and Shuman Buildings) which were demolished. Although this might be a legitimate cost for federal tax purposes, it hardly indicates an investment in downtown Boston. Since excluding these two questionable costs leaves a total of \$20 million, the Finance Commission asked Allied's Vice President Frank to furnish the Commission with an official accurate cost breakdown showing Allied's investment in the Jordan Marsh project. Frank initially agreed to furnish the information but on the advice of counsel later refused. Frank stated

that he did have figures showing that Allied invested more than \$35 million on the project but could not furnish the Finance Commission with the actual documents because of ongoing litigation concerning a separate Finance Commission investigation into the city's 121A practices.

Although the Finance Commission questions the \$35 million figure which Allied claims to have invested in the Jordan Marsh project, it may be that that amount was actually expended. An accurate determination is impossible without Allied's cooperation. As previously stated in this report, even if Allied did expend \$35 million, the Jordan Marsh reconstruction was in the best interest of the store, with or without Lafayette Place. Therefore, since the developers have drastically revised their obligations, the city's participation should have been evaluated by the Council in light of the new Lafayette Place plan and not the separate Jordan Marsh Project.

Notwithstanding the many problems and inconsistencies in the Lafayette Place Project, the City Council voted unanimously to approve the project (as has been explained, the Councillors were not provided with an accurate assessment). With the Council's approval and that of the mayor, the Tripartite Agreement was signed and the city will close on the Allied land purchase when the developer receives a permanent financing commitment.

Since the project has been approved and the bonding for the garage authorized, the BRA's role as project planner has been almost completed. Although the Authority will still be involved in several matters, including the drafting of the Chapter 121A Section 6A contract, the Real Property Board will now take over the project and begin design and construction of the garage. Desmond and Lord, Inc. has been hired to design the facility and the actual construction contract will be advertised and awarded in compliance with normal city procedures.

The Real Property Board, which is now responsible for carrying out the city's share of the development, contends that it does not have anyone on staff with enough expertise to manage the project for the department. To fill this void, the Board voted on March 14, 1979 to contract with Berlandi, who will resign from

Manager, representing the city's interest before the architect, contractor and developers. This is generally the same position he held respecting this project when he worked for the BRA as Director of Downtown Development. As an employee of the BRA, Berlandi receives \$33,835 per year working on a full time basis. Under contract with the Real Property he will be paid \$50 per hour up to a maximum of \$50,000 per year, and devote 2-3 days per week to the project.

The Real Property Board was informed by its counsel, Richard Hynes, that Berlandi's fee is comparable to the fee received by all Project Managers, including those employed in private industry. The Finance Commission has checked with the Public Facilities Department, which is responsible for constructing all city buildings (except public garages) and has discovered that Berlandi will be paid three times the amount that Public Facilities pays its Project Managers who perform almost exactly the same duties on comparable projects.¹

In addition to paying Berlandi more than what is normally paid for project management services, the Real Property Board's action may conflict with a certification the city made in its UDAG application. The city certified on page 39 of that application:

It [the city] will establish safeguards to prohibit employees from using positions for a purpose that is, or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

Although Acting Corporation Counsel Joseph Alviani has stated that Berlandi's proposed contract does not violate Massachusetts Conflict of Interest Laws (GL c. 268A) the above certification sets forth a much broader requirement. The Finance Commission has requested of Mr. Alviani that he not approve the proposed contract with Berlandi.

¹The Public Facilities Department employed one person, full time, under contract at \$15 per hour to manage both the \$35 million Occupational Resource Center and \$45 million Madison Park High School Projects. When that person, who is a registered architect, was asked to also perform the duties of Chief Architect for the Department, his compensation was increased to \$17.50 per hour.

CONCLUSIONS

Boston is a city with excellent development potential. The Quincy Market restoration and Waterfront revitalization have become extremely successful and plans for the Charlestown Navy Yard and Copley Place show promise for future successes. In order for the city to realize its potential, it must insure that limited public funds, while acting as a catalyst to generate private investment, are equitably expended amongst competing interests and not misspent. While it is important that the downtown retail district be upgraded to provide a safe and attractive marketplace for both merchants and shoppers, it must be guaranteed that private parties do not unreasonably profit from the public investment.

The original Lafayette Place plan was an admirable attempt to satisfy the needs of both the private and public sectors. Unfortunately, the state of the national economy made it impossible for that project to be built. In an effort to meet the anticipation that was created by the original project, Lafayette Place was redesigned into a much smaller project that requires the public to make a larger expenditure while receiving a smaller return. When one follows the events to date, it is evident that the city has simply not negotiated an equitable arrangement. What was once a rather attractive project financially is now a project which will be very costly to the city.

The BRA and Real Property Board's actions respecting Lafayette Place reveal substantial deficiencies in the city's development process. Responsibility and cooperation between these two agencies was, and continues to be, poorly defined. The Real Property Board has no expertise to put together a development project of this nature. The Board must rely solely on outside assistance and in this instance all consultation was provided by the BRA. Although it is apparent that the Real Property Board should not be involved in such a project, at least they were receiving the assistance of the BRA. As a matter of fact, BRA employees

performed almost all tasks necessary to move the project along. It is therefore inconceivable that the Real Property Board would vote on the purchase of land from Allied while the BRA Director was still negotiating the terms of that very purchase. The Real Property Board should not have taken any vote without specific and detailed instructions from the BRA Director. At the same time, the Director of the BRA (Mr. Walsh) should have been kept informed of all Real Property Board actions and pending actions by his project director, Mr. Berlandi. These agencies or individuals in these agencies have sacrificed the best interests of the city.

Hopefully, Lafayette Place will succeed in further revitalizing the downtown retail district. However, if that success is to be realized, it will be at the exorbitant expense of the city. There is no question that the city must participate in a project of this nature, but priorities must be well defined in order to determine how much participation is sufficient.

The Finance Commission is well aware that certain incentives are necessary in order to put together a project of this nature. However, decisions must be made concerning the extent of the city's contribution and it has been difficult to accurately determine the extent of the city's participation in Lafayette Place when elements of the project are misrepresented.

The individuals who represented the city in this project have sacrificed the city's interests and have been overpressured and out negotiated by Allied and the developers as well. There is no reason why the city's overburdened taxpayers must subsidize Allied Stores Corporation, which in 1977 generated \$1.9 billion in net sales and \$74 million in profits. The demand that the city pay Allied the "enhanced" value for its land is unreasonable and should have been refused. Furthermore, Mondev-Sefrius should not be permitted to pay substantially lower taxes than those which are expected from other developers. That, coupled with the agreement to pay only \$150,000 per year for the air rights over the city's \$13 million garage, represents an unfair burden on the public.

The Finance Commission questions building a new garage at this time. It may be poor judgement to expect people to drive into downtown Boston when gasoline prices are expected to be \$1 per gallon and the prospect of rationing exists. With conditions such as those, the downtown retail district with its convenient MBTA service, becomes an asset even without a new parking garage.

While some argue that Lafayette Place has been delayed, in reality, it was pushed too quickly through the City's review process. Although the original project was stalled and finally abandoned, the new project, which should be examined in and of itself, was presented to the City in the summer of 1977 and approved by the City Council and Mayor in the fall of 1978. Although the Mayor and Council have given their approval for the project and it is too late to correct many of the inequities in agreements which have been finalized, this project and the process it underwent should be reviewed in detail. There are several aspects of the package which can still be changed and certainly there are significant changes which must be made in the development process to ensure that the errors of this project are not repeated.

RECOMMENDATIONS

Although the Tripartite Agreement has been signed, the developers have not presented the BRA with a permanent financing commitment and therefore the city has not closed on the Allied land purchase. Before closing on the land purchase, the Finance Commission recommends that the following action be taken:

(1) Prior to signing a Chapter 121A, Section 6A contract for in-lieu-of-taxes, the terms of the October 28, 1977 "letter of understanding" should be re-negotiated. The developers' payments should be increased to conform to that level which is expected in newly negotiated 121A's. Furthermore, those provisions which allow the developers to avoid paying a fair tax should be removed. A failure to do so jeopardizes the city's ability to negotiate future 121A agreements on an equitable basis.

(2) The Tripartite Agreement should be amended to include a strict time schedule for the developers' activity which will commence after substantial completion of the garage.

(3) The default section of the Tripartite Agreement should be amended to allow the city to collect reasonable damages if the developers default on their obligations. Those damages should reflect the lost garage income which will result if the private development is delayed or not built above the garage.

(4) If the City moves ahead with the project, the Real Property Board should either contract with an independent project manager to protect its interests or depend on a project manager assigned by the BRA. The Finance Commission is opposed, under any circumstances, to awarding a contract for project management services to Mr. Berlandi.

(5) The Department of Housing and Urban Development should immediately determine whether or not the proposed land acquisition complies with Section 301 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. HUD should review Mr. Beal's appraisal, which has been used to justify the city's \$5 million payment to Allied. If it is determined that Beal's judgment reflects an improperly inflated value, the land should be re-appraised by an independent appraiser, chosen by HUD. The new appraisal should then determine the price to be paid to Allied.

The city must also recognize the importance of establishing an effective and well structured development process. The problems which have arisen in the Lafayette Place Project clearly indicate that the city does not coordinate its planning and negotiating activities. Furthermore, there has been a failure to accurately determine what constitutes fair and reasonable public participation in a private development. The Finance Commission recommends:

(1) The Mayor should immediately establish a clearly defined process which the city will follow in all development projects. That policy should delineate the duties and responsibilities of all participating departments. The BRA should retain responsibility for negotiating specific agreements and other departments should not be involved in negotiations, thereby minimizing the impact of lobbying efforts.

(2) The city should adopt a uniform policy on the matter of determining the value of air rights. The city is not receiving a fair return for the air rights in the Lafayette Place project and that situation could have been avoided had the city implemented a policy on which to base negotiations.

(3) The City should do whatever is necessary to re-assign the responsibility for the construction of municipal parking facilities. The Real Property Board does not have the experience or expertise to participate in projects of this nature. The Public Facilities Department, which is responsible for the construction of all other municipal buildings, has the necessary expertise to handle a project

such as Lafayette Place and should, along with the BRA, be assigned the responsibility for future projects.

(4) The BRA should vigorously investigate the background and past performance of all developers, prior to designation, especially those which are brought in as joint venturers with previously designated developers.

By,

THE FINANCE COMMISSION

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